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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,224	02/26/2004	Burkhard Kuhls	080437.53236US	2832
23911 7590 02/02/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
JOHNSON, CARLTON				
ART UNIT		PAPER NUMBER		
2436				
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02/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/786,224

**Applicant(s)**

KUHL, BURKHARD

**Examiner**

CARLTON V. JOHNSON

**Art Unit**

2436

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 3-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art Unit 2436

/Carlton V. Johnson/  
Examiner, Art Unit 2436

Response to Arguments

Examiner Position:

The arguments were not persuasive in overcoming the currently rejected claims.

The England prior art discloses the manufacturer of a control unit. In addition, the manufacturer of the control unit is the software developer and stores the software into the control unit after manufacture of the control unit. (see Specification Page 1) The England prior art discloses a manufacturer's public/private key pair and a control unit's private or secret key. (see England col. 7, line 63 - col. 8, line 14; generates and issues a signed manufacturer (manufacture is also software developer) certificate; usage of public/private key pair; separate key pair (including a private or secret key) placed into a CPU (or control entity); signed certificate contains manufacturer's public key and the private (secret) key of the manufacturer's CPU (or control entity))

The England prior art discloses a mechanism to protect content such as software developed for the operation of a control unit (computer system) such as in a vehicle. The content or software is protected using cryptographic techniques such as digital signatures using public/private key pairs and third party certificates. The claimed invention based on the specification concerns the protection of software: (specification page 2, paragraph [0006]: "this object is achieved by signing software provided for use by a control unit which is utilized by a vehicle").

Is Applicant's invention merely an accumulation of different types of certificates and their associated signatures (i.e. software, clearing code, ...)?

The concept and usage of a certificate mechanism as a security and access control mechanism is well known in the art. The usage of software to operate an entity such as a control unit that controls a vehicle is well known in the art. Computer controlled units for controlling the operation of a vehicle have been in use for quite some time. The usage of well known in the art techniques such as a digital signature has been used as a security mechanism for quite some time. Applicant's claimed invention appears to be a large set of well known in the art certificates utilized as a security mechanism for a vehicle software system.

A better citation to disclose the determination of a certificate being compromised is the determination that a certificate has been placed on a certificate revocation list by the trusted third party. The England prior art discloses that a certificate has been revoked and placed onto the certificate revocation list. (see England col. 12, lines 27-30).